

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

G.A. NARANJO,)	
Plaintiff)	
v.)	C.A. No. 05-106 Erie
)	
WARDEN JAMES F. SHERMAN,)	
Defendant.)	

ORDER

Plaintiff originally filed this prisoner civil rights action on April 5, 2005, without payment of the filing fee or submission of a motion to proceed *in forma pauperis*. On April 29, 2005, this Court issued an Order requiring Plaintiff to either pay the filing fee or file a motion to proceed *in forma pauperis*, or suffer dismissal of this case for failure to prosecute. [Document # 1]. In response to this Order, Plaintiff filed a motion to proceed *in forma pauperis* on May 24, 2005; however, the motion was not accompanied by a certified copy of Plaintiff's institutional account statement, as required by 28 U.S.C. § 1915(a)(1). As a result, this Court issued a Report and Recommendation on July 22, 2005, recommending that this case be dismissed, without prejudice. [Document # 3]. On August 11, 2005, District Judge Sean J. McLaughlin issued an Order adopting this Court's Report and Recommendation and dismissing this case without prejudice. [Document # 4].

On August 12, 2005, Plaintiff filed an untimely response to this Court's Report and Recommendation, attaching copies of commissary receipts in an effort to demonstrate the amount of funds available in his institutional account. [Document # 5]. On August 22, 2005, Plaintiff filed a motion for reconsideration of District Judge McLaughlin's Order dismissing this case, based primarily upon his submission of the commissary receipts. [Document # 7]. Upon consideration of Plaintiff's motion for reconsideration, District Judge McLaughlin issued an Order on December 8, 2005, reopening this case. [Document # 8]. A copy of this Order was served upon Plaintiff at FCI-McKean, his last known place of residence; unfortunately, Plaintiff

had failed to notify this Court that he had been discharged from FCI-McKean in November 2005 and, as a result, Plaintiff never received a copy of the Order reopening this case. (See Document # 18 at ¶ D).

Unaware that Plaintiff had not received notification that this case was reopened, this Court issued an Order on January 25, 2006, granting Plaintiff *in forma pauperis* status, and subsequently issued an Order on March 7, 2006, directing the United States Marshal to serve Plaintiff's Complaint upon the Defendant. [Document ## 10, 11]. On July 17, 2006, this Court received correspondence from the United States Marshal stating that Plaintiff had not provided proper service instructions. As a result, this Court issued an Order on October 12, 2006, requiring Plaintiff to provide the necessary service instructions to the Marshal's service by October 27, 2006, or suffer dismissal of this case for failure to prosecute. [Document # 15]. Once again, this Order was forwarded to FCI-McKean for service upon Plaintiff.

On December 6, 2006, after noting that there was no indication on the docket that Defendant had yet been served, this Court issued a Report and Recommendation recommending that this case be dismissed for Plaintiff's failure to prosecute. [Document # 16]. This Report and Recommendation was adopted by District Judge McLaughlin by Order dated December 27, 2006, and this case was, again, dismissed. [Document # 17].

On January 26, 2007, Plaintiff filed untimely objections to this Court's Report and Recommendation dated December 6, 2006, stating that he had been recommitted in December 2006, to serve a parole violation term at the Federal Correctional Institution at Elton in Lisbon, Ohio, where he apparently received, for the first time, service copies of the Report and Recommendation and District Judge McLaughlin's December 27, 2006 Order dismissing this case. [Document # 18]. Due to the fact that Plaintiff was unaware of the reopening of this case in December 2005, as well as all subsequent activity in this case up to and including the second dismissal of this case in December 2006, District Judge McLaughlin issued an Order reopening this case on March 29, 2007.

AND NOW, this 3rd day of April, 2007;

IT IS HEREBY ORDERED that, if Plaintiff intends to proceed with this action, he must, **on or before April 23, 2007**, sign and file the Notice and Authorization form attached to this Court's Order granting Plaintiff *in forma pauperis* status [Document # 9], a copy of which is enclosed with this Order. Failure to file the Notice and Authorization form within such time will result in the dismissal of this case for failure to prosecute.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge